

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1, 6-7, 9-10, 13, 18 and 20-29 are pending in the application, with claim 1 being the independent claim. Claims 5, 8, 11, and 12 are sought to be cancelled without prejudice to or disclaimer of the subject matter therein. Claim 1 has been amended to clarify the claimed subject matter. Support for the amendment to claim 1 can be found, *inter alia*, at paragraph [0018] and [0038] of the specification.

The above amendments have been made to put the application into condition for allowance. Applicants believe that the changes introduce no new matter, and their entry is respectfully requested. Based on the above amendments and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Rejections under 35 U.S.C. § 112, first paragraph, enablement

Claims 5, 8, 11 and 12 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the enablement requirement. (*See* Office Action, ¶ 16, Page 5.) Applicants respectfully disagree. However, without acquiescing to the Examiner's rejection and solely in efforts to expedite prosecution, Applicants have cancelled claims 5, 8, 11, and 12. Thus, the rejection has been rendered moot. Accordingly, Applicants respectfully request that the outstanding rejection be reconsidered and withdrawn.

Rejections under 35 U.S.C. § 112, first paragraph, written description

Claims 1, 5-13, 18 and 20-29 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. (*See* Office Action, ¶ 17, Page 9.)

As an initial matter, as noted above, Applicants have cancelled claims 5, 8, 11, and 12 without acquiescing to the Examiner's rejection and solely in efforts to expedite prosecution. Thus, the written description rejection with respect to claims 5, 8, 11, and 12 has been rendered moot.

The Examiner has noted that claims 1, 5-13, 18 and 20-29 are interpreted as being drawn to a composition comprising one or more peptides "thirteen residues or less in length," wherein at least one or more peptides comprises a CTL epitope (Claim 1) and where an HTL peptide "is less than 50 residues in length" (claim 5). (*See id.*)

Furthermore, the Examiner states "that both limitations could encompass peptides as small as 2 amino acids in length Thus in view of the art-recognized meaning of a peptide, the instant claimed ranges of peptide sizes, and the specific teachings in the specification for de minimus sizes of CTL-epitopes and HTL epitopes, it is not at all apparent that Applicants specification discloses examples of immunogenic peptides being less than the preferred ranges, for example in [0041]." (Office Action, ¶ 17, Page 10.) In addition, the Examiner states that "[t]he specification does not provide sufficient written description as to the structural features of the claimed genus of CTL peptides *"thirteen residues or less"* (*Id.* (emphasis in original)).

The test for the written description requirement is whether one skilled in the art can reasonably conclude that the inventor has possession of the claimed invention in the specification as filed. *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1563, 19 U.S.P.Q.2d 1111, 1116 (Fed. Cir. 1991); MPEP § 2163.02.

Furthermore, the Federal Circuit has stated that the written description requirement for a claim directed to a genus of molecules may be satisfied by providing the sequences of a representative number of molecules which fall within the scope of the genus:

A description of a genus of cDNAs may be achieved by means of a recitation of [1] a representative number of cDNAs, defined by nucleotide sequence, falling within the scope of the genus or [2] of a recitation of structural features common to the members of the genus, which features constitute a substantial portion of the genus . . . We will not speculate in what other ways a broad genus of genetic material may be properly described . . .

Univ. of Calif. v. Eli Lilly & Co., 43 U.S.P.Q.2d 1398, 1406 (Fed. Cir. 1997).

Finally, "[t]he written description requirement does not require the applicant 'to describe exactly the subject matter claimed, [instead] the description must clearly allow persons of ordinary skill in the art to recognize that [they] invented what is claimed.'" *Union Oil of Cal. v. Atlantic Richfield Co.*, 208 F.3d 989, 54 U.S.P.Q.2d 1227 (Fed. Cir. 2000).

In view of the standard for written description discussed above, Applicants assert that they are in possession of the claimed invention and that a representative number of species of the claimed invention have been disclosed.

Applicants note that independent claim 1 has been amended to recite that the one or more peptides is "eight to thirteen residues in length." Claims 6-7, 9-10, 13, 18 and 20-29 depend, either directly or indirectly, from claim 1 and therefore incorporate this limitation. Thus, the claims as amended do not encompass peptides as small as 2 amino acids in length, but rather encompass peptides in accordance with the description set forth, for example, in [0038] and [0041]. The claimed range therefore encompasses species that correspond to the preferred size ranges comprising the minimal essential motifs which retain biological activity as disclosed in the specification.

Furthermore, a representative number of species which fall within the claimed range are disclosed and claimed. Claim 1 recites peptides all of which are representative examples that fall within the claimed range. In addition, the specification lists numerous CTL peptides in Tables 11-29 which are representative examples of species that also fall within the claimed range.

In view of the above, Applicants assert that pending claims 1, 6-7, 9-10, 13, 18 and 20-29 satisfy the written description requirement of 35 U.S.C. § 112, first paragraph. Accordingly, Applicants respectfully assert that the Examiner reconsider and withdraw the rejection.


Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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